COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 030605-01**

Linda Myers	Employee
M.B.T.A.	Employer
M.B.T.A.	Self-Insurer

REVIEWING BOARD DECISION
(Judges Horan, Carroll and Costigan)

APPEARANCES
William J. Branca, Esq., for the employee
Ronald St. Pierre, Esq., for the self-insurer

HORAN, J. The self-insurer appeals from a decision awarding the employee § 34 benefits due to a work-related aggravation of her pre-existing bladder infirmity. The self-insurer contends the judge failed to make findings pertinent to the applicable causal relationship criteria,[1] and that the award is unsupported by the medical evidence. We agree the judge failed to expressly address the § 1(7A) issue, but we nevertheless affirm the decision, as the medical evidence adopted met the proper standard.

The employee worked for the employer as a bus driver. In April of 2001, she took medical leave to undergo bladder surgery for a condition unrelated to work; she was out of work for six weeks. (Dec. 142.) On August 15, 2001, the

[1] The insurer raised § 1(7A) in defense of the employee's claim. That section provides, in pertinent part:

> If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease *remains a major but not necessarily predominant cause of disability or need for treatment.*

(Emphasis added.)

employee was driving a defective bus, which tossed her from her seat as it traveled over bumpy roads. The jostling caused the seat belt to irritate her surgical scar, resulting in renewed abdominal pain. As a result, she left work. She did not return until October 23, 2001, after receiving medical clearance. (Dec. 143.)

The self-insurer denied the employee's claim for workers' compensation benefits. After her claim was denied at conference, the employee appealed to a full evidentiary hearing. The self-insurer cited § 1(7A) in defense of the claim. (Dec. 140.) The impartial medical examination was waived, as the employee sought a closed period of weekly incapacity benefits.[2] (Dec. 142.) The parties submitted medical evidence in the form of reports and depositions. (Dec. 141.) The judge credited the testimony of the employee's treating urologist, Dr. Vernon Pais. (Dec. 145.) Although listing it as an issue in his hearing decision, the judge failed to mention § 1(7A) in his general findings.[3] Id.

The self-insurer contends that Dr. Pais's causation opinion was confusing and insufficient as a matter of law, under § 1(7A), to support the award of benefits. We disagree. Dr. Pais testified as follows:

> Q: Doctor, do you have an opinion, based on reasonable medical certainty, as to whether this event involving the bus that you described having occurred on August 15 . . . whether that event caused or aggravated an underlying condition and caused her to be disabled?
>
> A: I certainly think that it aggravated a recently healing wound. It might not have affected me or you if you don't have any surgery, and I think it definitely aggravated – if a person never had surgery, a bouncing seat might not affect us that badly, but someone that had, you know, surgery, the healing phase, I think that definitely contributed to her discomfort, injury, and disability.
>
> Q: Is that the significant reason why she was out of work?

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[2] See 452 Code Mass. Regs. § 1.02.

[3] We prefer administrative judges to make explicit findings in hearing decisions on all issues raised. However, in this case, the judge's error is harmless, as the credited medical evidence of record supports his sub silentio rejection of the § 1(7A) defense.

A: Yes.

(Dep. 17.)

> Q: I want to direct your attention to this question, Number 5, where it states, "What is the major but not necessarily predominant cause of the patient's disability." Could you tell us what your answer was for that?
>
> A: "Recent surgery for stress urinary incontinence."

(Dep. 26.)

The two statements are consistent. Only one cause can be "*the* major" cause, because use of the definite article "the" means that the cause is *greater* in importance than all others. However, "the significant reason," or cause, of a disability is one that can logically coexist with "the major" cause. This is because significant means "notable" or "meaningful." American Heritage Dictionary, 2nd College Edition (1985). We also note that Dr. Pais opined the employee's experience with the faulty bus caused a "new injury," and he further testified: "So I think that what I'm saying, the predominant cause is new injury . . . ." (Dep. 28.) Cf. Brooks v. Labor Mgt. Servs., 10 Mass. Workers' Comp. Rep. 575, 580 (1997) (internally inconsistent opinion of § 11A physician could not be accorded prima facie force; additional medical evidence mandated due to inadequacy).

We view Dr. Pais's testimony concerning causation as legally sufficient for § 1(7A) purposes. In Siano v. Specialty Screw & Bolt, Inc., 10 Mass. Workers' Comp. Rep. 237, 240 (1996), we held that "a significant cause" was the legal equivalent of "a major cause" for § 1(7A) purposes. Therefore, the phrase "the significant" cause must also, logically, suffice to satisfy the requisite standard. See also Cross v. Beverly Rehabilitation, 17 Mass. Workers' Comp. Rep. 241, 243 (2003).

The self-insurer's second argument on appeal is not meritorious, as there was a great deal of medical evidence supplied by Dr. Pais supporting the employee's disability from August 16, 2001 to October 22, 2001. (Dep. 14-19.)

The decision is affirmed. Pursuant to § 13A(6), employee's counsel is awarded a fee of $1,312.21.

So ordered.

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Mark D. Horan
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

Filed: January 28, 2005